

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9100 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANAIYALAL GORDHANDAS HINDOCHA

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioner

MR SP HASULKAR ADDL GP for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/01/99

ORAL JUDGEMENT

Rule returnable today. Addl. Government Pleader Mr. Hasurkar appears for and waives service of rule on behalf of the respondents.

2. Under Resolution dated 12th September, 1997, petitioner was appointed as the Chief Officer of Dwarka

Municipality in the Pay Scale of Rs. 2000 - 3500. The said resolution was challenged before the Collector by the Regional Director of Municipalities. Pursuant to which, the impugned order was made on 23rd October, 1997 declaring that the appointment of the petitioner as Chief Officer in the Pay Scale of Rs. 2000 - 3500 made without prior permission of the Director of Municipalities was bad and illegal. The Collector, therefore, directed to stay the implementation of the Resolution dated 12th September, 1997. Feeling aggrieved, the petitioner has preferred the present petition.

3. Mr. Jhaveri, the learned advocate appearing for the petitioner has contended that the President of the Municipality did not relieve the petitioner so as to enable him to attend the proceedings before the Collector. The petitioner, therefore, could not defend the action of the Municipality and thus the petitioner has been denied the fair opportunity of defence. Mr. Hasurkar has contended that the Collector had given enough opportunity to the petitioner, however, he did not appear before the Collector and defend the action of the municipality.

4. On the facts and in the circumstances of the case it does appear that in the interest of justice the petitioner shall get an opportunity to defend the action of the municipality before the Collector. Petition is, therefore, allowed. Respondent No. 2 is directed to hear the petitioner and make the order afresh on condition that petitioner shall appear before the Collector on the date that may be fixed by the Collector. Further, in the meantime, the petitioner shall be permitted to be continued as the Chief Officer of the Dwarka Municipality. This order is made without prejudice to the rights and contentions of either of the parties. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.
